

Program Directions:

When Should Juveniles be Tried as Adults?

Note: This program was prepared by Colorado District Judges David Prince and David Shakes who would be happy to talk to you about the materials. They can be reached at: david.prince@judicial.state.co.us (719 452-5234) or david.shakes@judicial.state.co.us

Program Objective:

In this presentation, you will have the class act as two of the three branches of government. They will initially sit as a legislative body and write a “law.” They will then divide into smaller groups and act as a judge to apply their “law” to one of the supplied fact scenarios. This program requires you to guide them a bit in the legislative session so that you get a “law” you can work with in the next stage.

I. Introduction (5 minutes or less)

- A. Start with an attention grabbing story rather than a personal introduction. We have a suggestion that works well for this program in the materials on the website. It is based on a student who killed his grandmother in Monument, Colorado.
- B. Class Interaction: the Three Branches
 - Get the classroom participation ball rolling right from the start by asking the class to name the three branches of government.
 - Ask them what each branch does, leaving judicial for the last.
 - Ask them which branch you represent and then what does the judge do.
- C. Provide a very brief overview of the role of a judge.

Note from authors: Your point is to ensure the students understand that the judge is not simply someone selected to do what they think is right in each case. Instead, the judge is constrained by the law and the judge’s job is to apply the law to each individual case fairly and impartially, unmoved by personal bias or sympathy.

- D. Tell the class that today they will serve as two of the three branches of government, first, as legislators they will write a law.
- E. Then as a judge, they will apply the law.

III. Legislative Session: Writing the Law (10 minutes)

Note from authors: If you are in a 45 minute class, this part has to be done with dizzying speed.

The challenge we are am finding with the average middle class high school is that they seem very cavalier about sending a juvenile to the adult system. So try and impress upon them the differences between the two systems and the gravity of sending a kid off to DOC.

- A. Tell the students they are now the legislature and need to set standards for when a juvenile can be treated as an adult in the criminal justice system.
- B. Work with the class to define the standard. The factors they develop are predictable: the age of the defendant, type of crime, and prior criminal record.

Note from authors: You will need to provide some gentle guidance to the discussion to make sure the standards are set so they work with our scenarios. If you are moving fast, you can just keep prompting discussion until a student states the standard you are seeking (see below) and then you declare that to be the standard chosen. If you get the luxury of debate, you can have them vote. You can make points at the end of the discussion as well to steer them to a standard you can use. If the debate brackets what you want, you can also just remind them that legislating is about compromise and you can declare the compromise to suit your ends.

- **Age Range:** Steer the group to a minimum age of 15. One of the scenarios has a 14 year old that is a very bad actor. You want to be sure that person doesn't qualify. With some of the hard line classes, getting any age set can be a challenge since they seem happy to give the death penalty to four year olds for littering. One approach is to ask about other milestones of responsibility (can drive starting at 15, start high school at 14, can work with a permit before 15). A teacher I work with often uses the freshmen at the high school as an example for more senior classes. You guys all complain about them because they don't know what is going on, is there age part of that etc...
- **Type of Crime:** Here, you will mostly be pointing out what is not covered by their narrow standard (do you want violent rapes to covered?) or the crimes that are covered by their loose standard (do you really want spilling paint on the floor to be grounds for adult treatment?). You can talk about some traditional dividing lines like crimes against people vs. crimes against property and crimes of violence vs. other crimes or levels of culpable mental states (they often seem to come up with this on their own). Make sure theft does not qualify for adult punishment.
- **Criminal Record:** They usually will come up with this as an issue but have little idea what to do with it. You can probe a little by asking if they want to set a number standard, like two prior convictions. You can then point out the variety of possible convictions and educate them a little on looking more at the nature of the event than just checking a box on a list. There is a world of difference between a shoplifting prior conviction and an attempted murder prior conviction and the standard should account for this. Prompting such a discussion can be helpful to you in getting them in the frame of mind to do the analysis ahead. The end result here should be a generalized direction to the judge to evaluate the record to see how bad an actor this is and how likely they are to be rehabilitated. One of the scenarios has a person with priors, but they are inconsequential.

- C. Have student or teacher write the standards the class sets up on the board as you can go along so you are building a list to refer to later. Make sure that at the conclusion of this part of the program you have a caption that reminds them what they are doing, something like “**A Juvenile Can Be Punished as an Adult If....**”

Note from Authors: Feel free to let the class add other factors. Just have your scenarios in mind so you can steer them away from anything that will screw things up.

IV. Being the Judge (approximately 20 minutes)

In our system of law, the judge decides whether a juvenile may be treated as an adult. The District Attorney makes the request, the judge then applies the factors set by the legislature and makes the decision.

- A. Tell the students are no longer legislators. They are now district court judges and have been asked to rule on a DA's request to treat a defendant as an adult.
- B. Have the teacher divide the class into working groups of 4-6 students each. Tell the students they need to pick a person to be their reader and a note taker. The note taker will report on the group's decision so it is important to write down the reasons they had for reaching a specific conclusion.
- C. Hand out ONE scenario to each of the groups. You have 3-5 different scenarios to spread around among however many groups you have. It is likely that multiple groups will have the same scenario. The scenarios are designed to illustrate points as follows, and all are drawn from real cases:

Note from authors: Print out one scenario per page. If you print each scenario on a different color paper you can quickly look around the room and identify the groups. We usually give only one handout per group so they have to read it as a group. I have a vague idea that this helps start the discussion better than having the long silence while each person reads it to themselves.

Scenarios (print from file provided)

Mickelson—theft. Minor crime that won't qualify under the standard set. Bad, bad prior record. Only 15 years old (so, likely at the bottom of the range set). Kid is clearly going to be a danger to society and has had his chances at rehabilitation, but crime does not qualify. I have told the classes when they grudgingly accept that the defendant won't be treated as an adult that the newspaper headline tomorrow will read “Judge [I use one of their names] gives murderer slap on the wrist.”

Gilgal—shooting. Very dangerous crime but minimal actual injury. Modest prior record. Shadowy hints of gang connections, but these might be illusory. Defendant is 14 (which is probably below the limit set by the legislature).

Viemen—Sexual Assault Victim Murders Attacker. Bad, bad crime. No prior record. Nearly adult age. Very understandable crime that indicates the person is unlikely to be a threat to society in the future.

- D. You now walk around and prompt each group's discussion. You will likely need to answer some questions from each group about the scenario. They are quick to make all kinds of assumptions and completely change the scenario.

Notes from authors: You may or may not need to prompt them to have analytical discussions. Questions such as why and why not are your best tools. "Does everybody agree" is also useful. You will find wide variation between groups--some may make a decision in 30 seconds and others are incapable of ever reaching a group decision.

You may have to help them make a decision. You may also have to push them along and challenge them a bit if they "rush to judgment" and don't have a discussion. Here is where you can give range to your creativity—but the goal is to make them work at their assignment.

- E. As you sense the discussions are winding down in value, call an end to this section.

V. Class Discussion of Results (15 minutes)

- A. Have the group spokespeople report. You will have already given them a chance to practice as when you went around prompting discussion. Since you know the different results choose an order that helps the discussion along.

Note from authors: I usually start with Mickelson, then Gilgal, and then close with Viemen. If more than one group has a scenario, be sure to get both reports and thoughts.

Prompt the discussion as needed. The goal is to make them think through the tensions of the decisions—and then ultimately lead them to the need to apply the law fairly and impartially. You can ask other groups what they think of another's reasoning. You can play the role of someone involved in the case and express your unhappiness with their decision. Feel free to change scenario facts to put pressure on the student and make the decision difficult.

- B. As some part of your discussion of results, pursue some sort of appeal with the presenter(s) making an argument. We have found that this can be key to helping the students understand and focus on the legal issues as you wind down the discussion.

You will likely get a group that violates one of the legislative rules. If I have the time, I'll then make one of the other groups the court of appeals. I'll make the appellant's argument and try to get the first group overturned. Recall, one of our messages is that the law dictates the result, not the judge. So calling a result wrong is just fine—and frankly a better class session. You can also just ask for general class comments on the group's decisions—whatever tactic you think will get some participation and a chance to drive home message of applying the law.

VI. Closing

- A. Do a wrap up emphasizing that the trial judges must apply the rules they are given and cannot change them.
- B. You can also note how easy rules written with something specific in mind can have unintended consequences.